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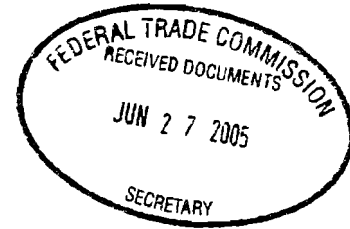
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June 27, 2005

Federal Trade Commission
Office of the Secretary
Room H-159
600 Pennsylvania Avenue, NW
Washington, DC 20580



RE: CAN-SPAM Act Rulemaking, Project No. R411008

Dear Sir or Madam:

The Credit Union National Association (CUNA) is pleased to respond to the Federal Trade Commission's (FTC's) proposed rule interpreting a number of provisions of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN-SPAM Act). The CAN-SPAM Act requires that an e-mail message that has a commercial primary purpose must: 1) clearly and conspicuously indicate that the message is an advertisement or solicitation; 2) provide recipients with an opportunity to "opt-out" from receiving additional commercial e-mail messages from the same entity; and 3) provide a physical postal address of the sender. By way of background, CUNA is the largest natural credit union trade association, representing approximately 90% of our nation's 9,100 state and federal credit unions.

Summary of CUNA's Comments

- We do not believe it is necessary to shorten from ten to three days the opt-out processing time that a sender has to honor an opt-out request from a recipient of the commercial e-mail.
- Post office boxes and commercial mail drop addresses should not be considered "valid physical postal addresses" that are required to be included in the commercial e-mail messages.
- Since debt collection e-mails are associated with transactions, we believe such e-mails should be covered under the "transactional or relationship" exception to the CAN-SPAM Act requirements.
- The CAN-SPAM Act requirements should apply to e-mails sent to consumers whose membership in an organization has lapsed, but only after a reasonable time after the membership has lapsed.
- Senders of commercial e-mails may, but should not be required to, honor opt-out requests indefinitely.



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Discussion

The proposed rule clarifies a number of definitions, including the definition of “valid physical postal address” that has to be included in a commercial e-mail message. The rule also shortens the processing time for opt-outs submitted by consumers from ten to three days, as well as clarifies that consumers must not be required to pay a fee to opt-out, provide additional information, or take actions other than what is currently required.

The requirements under the CAN-SPAM Act that apply to e-mail messages having a commercial primary purpose do not apply to “transactional or relationship” e-mails, defined as those in which the primary purpose is to: 1) facilitate, complete, or confirm a commercial transaction that the recipient has previously agreed to enter into with the sender of the message; 2) provide notification about a change in terms, features, or account information; or 3) deliver goods or services, including product updates. This exception for “transactional or relationship” e-mails would exclude a vast majority of e-mails that are sent by credit unions.

However, we recognize there may be e-mails sent by credit unions that would not be covered under this exception and that the CAN-SPAM Act requirements also apply to trade associations, such as CUNA. For these e-mails, we generally have no objection to most of the changes outlined in the proposed rule.

One aspect of the proposed rule that we do question is the change that will shorten from ten to three days the opt-out processing time that a sender has to honor an opt-out request from a recipient of the commercial e-mail. Although we support the concept of honoring the opt-out request as soon as reasonably possible, we are concerned that there may be inadvertent violations if a request is honored shortly after the three-day period, but within the current ten day time requirement. Some smaller financial institutions, including credit unions, may not be able to meet the three-day deadline, and this could be of particular concern for those that rely on third party vendors to update their databases.

Consumers who exercise the opt-out right have a strong desire to reduce their spam e-mails to the extent possible, and we support their right to do so. However, we have no reason to believe that consumers will not be satisfied if their request is made within the current 10 day-time requirement. Absent evidence from the FTC to the contrary, we believe consumers will be satisfied if they can exercise their opt-out right with the knowledge that their request will be satisfied within a reasonable period, such as ten days. For this reason, there would be little, if any, additional benefit to the consumer by shortening this time period, which we believe could lead to inadvertent violations if this time period were shortened to three days.

Although not included as one of the proposed changes, the FTC has requested comment on whether post office boxes and commercial mail drop addresses should be considered “valid physical postal addresses” that can be included in the commercial e-mails. We do not believe such addresses should be considered valid postal addresses because such addresses are often used in fraud schemes and can effectively shield their owners from identification. This would have the potential of facilitating unscrupulous e-mail marketing.

The FTC has also requested comment as to whether debt collection e-mails should be considered “commercial” and, therefore, covered under the CAN-SPAM Act requirements. Since debt collection e-mails are associated with transactions, we believe such e-mails should be covered under the “transactional or relationship” exception to the CAN-SPAM Act requirements.

An issue that the FTC has also raised is whether e-mails should be covered under the CAN-SPAM Act if they are sent to consumers whose membership in an organization has lapsed, even though the exceptions to the CAN-SPAM Act requirements would likely apply if that consumer remained a member. We believe the requirements should at some point apply to e-mails that are sent after the membership has lapsed since they would then be indistinguishable from other types of e-mails that are subject to the CAN-SPAM Act requirements. However, the CAN-SPAM requirements in these situations should not necessarily apply until at least some reasonable period after the membership has lapsed to take into account that the membership may have lapsed for other reasons besides disinterest on the part of the member.

Another issue on which the FTC has requested comment is whether an opt-out request from a consumer should be honored indefinitely. Although we believe any credit union sending commercial e-mails may choose to honor such requests indefinitely, we believe the FTC should adopt a time period, such as five years. Current law in other situations allows for such a time period, the most current example being the five-year time period that is included in the affiliate marketing requirements under the Fair and Accurate Credit Transactions Act.

We also want to take this opportunity to reiterate comments that we have previously submitted to the FTC in response to prior proposals for implementing the CAN-SPAM Act. Most notably, we urge the FTC to state definitively that newsletters from membership organizations should not be considered commercial e-mails that would be subject to the CAN-SPAM Act requirements. We also urge the FTC to revisit the standard for what constitutes a “commercial e-mail.” We believe the primary purpose of an e-mail for purposes of making this determination should be based on the “net impression” of the e-mail. For example, under this approach, the primary purpose of the e-mail would be “commercial” if the subject line of an e-mail indicates that its message contains an advertisement or promotion of a product or service and/or the most prominent content of e-mail promotes the sale of a product or service.

Thank you for the opportunity to comment on the proposed rule interpreting certain provisions of the CAN-SPAM Act. If you have questions about our comments, please contact Senior Vice President and Associate General Counsel Mary Dunn or me at (202) 638-5777.

Sincerely,



Jeffrey Bloch
Senior Assistant General Counsel